

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

UNITED STATES OF AMERICA,

vs.

DONALD J. TRUMP,
WALTINE NAUTA, and
CARLOS DE OLIVERIA,

Defendants.

**Case No. 23-80101-CR
CANNON/REINHART**

**UNOPPOSED MOTION OF AMERICA FIRST LEGAL FOUNDATION
FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE
AND INCORPORATED MEMORANDUM OF LAW**

America First Legal Foundation (AFL) respectfully move this Court for leave to participate in these proceedings as *amicus curiae*, and to file the attached brief *amicus curiae* in support of President Trump’s Motion to Dismiss the Indictment Based on the Presidential Records Act (PRA). (Dkt. 327). President Trump, through counsel, consents to our motion. The Government, through counsel, has stated that it takes no position on our motion.

While there are no Federal or Court Rules that specifically discuss the making of amicus submissions in criminal cases at the trial level, “the district court, however, has the inherent authority to appoint *amici curiae*, or ‘friends of the court’ to assist it in a proceeding.” *Resort Timeshare Resales, Inc. v. Stuart*, 764 F. Supp. 1495, 1500 (S.D. Fla. 1991) (citing *United States v. State of Mich.*, 116 F.R.D. 655, 660 (W.D.

Mich. 1987)). We note that district courts in the Southern District of Florida have granted leave to participate as *amicus curiae* when the *amicus* has a special interest or unique expertise that can assist the court in its consideration of the issues raised by the case. *See, e.g., United States v. Emmanuel*, No. 06-20758-CR, 2007 WL 2002452 (S.D. Fla. July 5, 2007). As detailed below, AFL has a special interest in the case as well as unique expertise in the Presidential Records Act (PRA) that can assist this Court in its consideration of the issues presented.

I. Interest of *Amicus Curiae*¹

Amicus AFL is a public interest law firm providing citizens with representation in cases of broad public importance to vindicate Americans' constitutional and common law rights, protect their civil liberties, and advance the rule of law. AFL employs former Department of Justice, Executive Branch, and Congressional staff lawyers intimately familiar with the use and abuse of politically-motivated investigations. Thus, AFL has a strong interest in this matter.

II. Expertise in Abuse of the Presidential Records Act

Since its inception, AFL has investigated, litigated, and produced scholarship on the weaponization of the National Archives and Records Administration (NARA) and the political targeting of the former President. During its first year, AFL filed a brief *amicus curiae* at the Supreme Court in *Trump v. Thompson*, 142 S. Ct. 680

¹ No attorney for any party authored any part of this brief, and no one apart from *amicus curiae* and its counsel made any financial contribution toward the brief's preparation or submission.

(2022), which considered the authorized disclosure of Presidential records to Congress for oversight under the PRA. AFL’s investigations of NARA confirmed that the Federal Bureau of Investigation obtained access to the “15 Trump boxes” through a “special access request” from the White House on behalf of the Department of Justice.² Because NARA’s action, which AFL uncovered, appeared to be an unlawful abuse of executive authority, AFL requested the Inspectors General of NARA and the Department of Justice to investigate.³ Moreover, AFL has published a white paper detailing why—as a matter of constitutional law, the PRA, and historical practice—the President has absolute authority over presidential papers.⁴ AFL also represents the plaintiff in the pending case cited as Exhibit 1 to President Trump’s Motion to Dismiss, ECF No. 327-1, *Solomon v. Garland*, No. 23-cv-00759-RJL (D.D.C. filed Mar. 21, 2023).

With this expertise, AFL respectfully requests that the Court grants its motion for leave to participate as amicus curiae and further requests that the Court grants

² *America First Legal’s Investigation Reveals the Biden White House Was Involved With the Mar-a-Lago Raid and that NARA Misled Congress; AFL Launches Additional Investigation*, AM. FIRST LEGAL FOUND. (Apr. 10, 2023), <https://bit.ly/3MDRJku>.

³ Letter from Reed Rubinstein, Am. First Legal Found., to Michael E. Horowitz, Inspector Gen., Dep’t of Just., and Dr. Brett M. Baker, Inspector Gen., Nat’l Archives and Recs. Admin. (Apr. 17, 2023), <https://bit.ly/3Ifn4G>.

⁴ AM. FIRST LEGAL FOUND., *THE PRESIDENTIAL RECORDS ACT CANNOT SUPERSEDE A FORMER PRESIDENT’S AUTHORITY OVER PRESIDENTIAL PAPERS* (Oct. 10, 2023), <https://bit.ly/3SWfBkK>.

it leave to file the accompanying Brief in Support of President Trump's Motion to Dismiss the Indictment Based on the Presidential Records Act in this case.⁵

CERTIFICATE OF CONFERRAL

Pursuant to Local Rule 88.9(a), undersigned counsel certifies that counsel for AFL has conferred in good faith with counsel President Trump and the Government concerning the relief requested by this motion. President Trump consents to this motion. The Government takes no position on this motion.

Dated: March 1, 2024

Respectfully submitted,

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⁵ Exhibit 1.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed with the CM/ECF website and served on March 1, 2024, to all counsel of record.

/s/ Samuel J. Salario, Jr.
Samuel J. Salario, Jr.